Office-Supreme Court, U.S.
FILED
MAY 19 1981
ALEXANDER L. STEVAS,
CLERK

80-1948
No.

IN THE

Supreme Court of the United States

SPRING TERM, 1981

FRANK GROOM KIRTZ, and MARY JANE KIRTZ,
Petitioners,

vs.

BLANTON WIGGIN, ERMA WIGGIN, ADVANCED INSTRUMENTS, INC., A.I. COMPANY, INC., a/k/a ADVANCED INSTRUMENTS, INC., and H-T-L INSTRUMENTS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Eighth Circuit

FRANK GROOM KIRTZ, and
MARY JANE KIRTZ, pro sese
4530 Pershing
St. Louis, Mo. 63108
(314) 361-1200

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

CONSTITUTIONAL QUESTIONS PRESENTED

1. Did the Court err in denying petitioners their rights to due process and the equal protection of the law, then there had never been a hearing of the Motion to Dismiss, by refusing to hear argument or any case law, and the Court insisted that petitioners settle for a "token" amount based upon a fictitious "judgment" fraudulently asserted orally by respondents, and upon refusal dismissed the Complaint and taxed costs against the petitioners?

2. Did the court err in denying petitioners their rights to due process and the equal protection of the law, by dismissing petitioners' Count 16 *without prejudice,* after five years, rather than remanding to the district court for an Answer and a hearing on the merits?

PARTIES INVOLVED

Petitioners, citizens of the state of Missouri, were minority stockholders owning 28% of a Missouri corporation, Med-Science Electronics, Inc. Respondents Blanton and Erma Wiggin, citizens of the state of Massachusetts, were the majority shareholders, principal Officers and Directors of said corporation.

The other respondents are all "dummy" corporations owned entirely by Blanton and Erma Wiggin, and serving as "conduits of title" for the fraudulent transfer of the assets and the stock of Med-Science Electronics, Inc., by Blanton and Erma Wiggin to themselves.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties Involved	i
Introductory Statement	1
Jurisdiction	1
Statutes, Regulations and Constitutional Provisions Involved	2
Statement of The Case	2
Reasons For Granting The Writ	7
I. The Opinion Of The Court Of Appeals "Conflicts With Applicable Decisions Of This Court" (Rule 17(c) Of The Supreme Court)	7
II. The Court Of Appeals "Has Decided An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court" (Rule 17(c) Of The Supreme Court) Because It Affects Adversely A Large Class Of Citizens: The Minority Shareholders Of The United States	7
III. The Complaint Clearly States A Cause Of Action Upon Which Relief Can Be Granted, Otherwise There Could Be No Reason For An Offer Of Settlement, And So Marked A Departure "From The Accepted And Usual Course Of Judicial Proceedings" By The Court Of Appeals In Connection Therewith, "As To Call For This Court's Power Of Supervision (Under Supreme Court Rule 17(a))	9
Conclusion	10

TABLE OF AUTHORITIES

Cases:

Conley, *et al.* v. Gibson, *et al.*, 355 U.S. 41, at 78 S.Ct. 99, 103, 2 L. Ed. 2d 80 (1957) 7

Delta Airlines, Inc. v. August, 101 S.Ct. 346 4

Dupuy v. Dupuy, 511 F.2d 641 (5th Cir. 1975)..... 4

Falls v. Fickling, *et al.*, 621 F.2d 1362 4

Sargent v. Genesco, Inc., 492 F.2d 750 (5th Cir. 1974) .. 4

Woodward v. Metro Bank of Dallas, 522 F.2d 84 (5th Cir. 1975) 4

Statutes and Rules:

Rule 10b-5 of the Securities and Exchange Act of 1934, 15 U.S.C.A. § 78 j(b) 2,3,4

Supreme Court Rule 17(a)..... 4,5,9

Supreme Court Rule 17(c)..... 7

Rule 8(f), Federal Rules of Appellate Procedure 7

Other Authorities:

Westlin, Bertil, "*Squeeze-Outs,* published by the Council for Business Research 8

No.

IN THE

Supreme Court of the United States

SPRING TERM, 1981

FRANK GROOM KIRTZ, and MARY JANE KIRTZ,
Petitioners,

vs.

BLANTON WIGGIN, ERMA WIGGIN, ADVANCED INSTRUMENTS, INC., A.I. COMPANY, INC., a/k/a ADVANCED INSTRUMENTS, INC., and H-T-L INSTRUMENTS, INC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Eighth Circuit

INTRODUCTORY STATEMENT

Petitioners, Frank and Mary Jane Kirtz, respectfully pray that a writ of certiorari issue to review the judgment and the opinion of the United States Court of Appeals for the Eighth Circuit (Appendix A).

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on Feb. 5, 1981 (Appendix A). Petition for Rehearing en banc was timely filed and denied summarily on Feb. 24,

1981. This petition for certiorari was filed within 90 days of said denial. This Court's jurisdiction is invoked under Rule 10b-5 of the Securities and Exchange Act of 1934, §10(b), 15 U.S.C.A. §78j(b) and is also based upon diversity of citizenship.

STATUTES, REGULATIONS AND CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are the Fifth and Fourteenth Amendments to the Constitution of the United States concerning abridgement of of petitioners' rights to due process and their rights of equal protection of the law, together with Rule 10b-5, Securities and Exchange Act of 1934, §10b, 15 U.S.C.A. §78j(b).

STATEMENT OF THE CASE

In its Opinion the Court of Appeals stated (Appendix A, page A-2, paragraph 3, line 3):
"It (the Court) suggested that the matter might be resolved if the plaintiffs would pay a 1971 judgment against them, together with accrued interest to the defendants and that, in turn, Advanced Instruments, Inc., a corporation controlled by the defendants, would pay a judgment against it in favor of the plaintiffs, together with the accrued interest thereon. The suggestion of the Court was accepted by the appellees and rejected by the appellants; thus, no settlement in the matter was achieved."

The Court was deliberately misinformed. THERE WAS NO JUDGMENT AGAINST PLAINTIFFS. There *never* has been. The defendants could not offer or file any evidence of such a "judgment", *since none exists.* They merely asserted orally what the Opinion states. The Court would hear nothing from plaintiffs, and there was *no oral argument.* Because plaintiffs refused a "set-off" of the *fictitious* "judgment", the Court taxed costs against the plaintiffs and dismissed their Complaint, denying them due process and the equal protection of the law.

The respondents, Blanton and Erma Wiggin, the majority shareholders and principal Officers and Directors of Med-Science Electronics, Inc., a Missouri corporation, transferred all the various assets of the company to themselves, through their "dummy" corporations, the other respondents.

Blanton and Erma Wiggin signed and sent through the interstate mails for filing with the Secretary of State of Missouri in 1973, an Agreement and Plan of Merger, contracting "to pay promptly" the "fair value" of the minority shareholders' holdings, to be determined by a Missouri court. The copy sent by the mails to the Secretary of State of Missouri was approved by the Secretary, who thereupon approved the dissolution by Blanton and Erma Wiggin of Med-Science Electronics, Inc., the Missouri corporation. Another copy of this Agreement and Plan of Merger was sent through the mails to the petitioners as part of the scheme to deceive relative to the sale of the stock.

The petitioners, minority shareholders, have been paid *nothing* for their 22,500 shares. The Missouri Court determined their value to be $75,424.00, plus interest from 1973 (the date of the merger), in a decision dated Feb. 22, 1977. Respondents have paid nothing.

The petitioners have been cheated out of their shares. Blanton and Erma Wiggin used the Agreement as a "manipulative device" or "scheme" employing means of interestate commerce to deceive petitioners, "in connection with the purchase or sale of securities", thereby violating Rule 10b-5 of the Securities and Exchange Act of 1934, and by paying nothing for the 22,500 shares.

The respondents deliberately misinformed the Court by stating orally that they "owned a 1971 judgment" against petitioners. Upon that fictitious assertion, the Court of Appeals insisted on a "set-off" (see Apendix A, page A-2, third paragraph).

Respondents own *no judgment* against petitioners.

The Court of Appeals would brook *no discussion* of the briefs, or of any case law. The Court insisted on "token" settlement. Petitioners were threatened with immediate dismissal unless they accepted the "token" offer of less than $5000.00, and taxation of costs against them.

When petitioners refused the offer, their Complaint was dismissed without reason, and costs taxed against petitioners, contra to the decision of the Supreme Court in *Delta Air Lines Inc.* v. *August,* 101 S.Ct. 346.

The only question before the Court of Appeals was whether the petitioners had stated a cause of action upon which relief can be granted under Rule 10b-5, Securities and Exchange Act of 1934, §10(b), 15 U.S.C.A. §78j(b).

The opinion (Appendix A) filed Feb. 5, 1981, violates Rule 17 of the Rules of the Supreme Court in several ways:

The opinion is in direct conflict with the decision of the United States Court of Appeals for the Fifth Circuit: *Falls* v. *Fickling et al.,* 621 F. 2d 1362, which states, ruling on the same question:

> "This Court has held that there are three basic elements. . . in 10b-5 actions: (1) conduct by the defendants proscribed by the rule; (2) a purchase or sale of securities by the plaintiffs 'in connection with' such proscribed conduct; and (3) resultant damages to the plaintiffs. *Sargent* v. *Genesco, Inc.,* 492 F. 2d 750, 759 (5th Cir 1974); see *Woodward* v. *Metro Bank of Dallas,* 522 F. 2d 84, 93 (5th Cir 1975)."

The present case meets fully these three elements.

The opinion (Appendix A) is also in direct conflict with the United States Court of Appeals for the Fifth Circuit in the case of *Dupuy* v. *Dupuy,* 511 F 2d 641 (5th Cir 1975) and 551 F 2d 1005 (5th Cir 1977), a leading case on stating a cause of action under §10b-5 in securities fraud.

The conduct of the Court of Appeals herein "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for exercise of this Court's power of supervision" by issuance of the writ of certiorari, Rule 17(a) of the Supreme Court.

That departure "from the accepted and usual course of judicial proceedings" consisted in dismissal of the Complaint without any consideration by the lower Court or the Court of Appeals. At the Court of Appeals "Hearing" of Oct. 16, 1980, *no oral argument was permitted pertaining to the pleadings or the Briefs;* and the issue on appeal (as to whether the Complaint stated a cause of action upon which relief could be granted) was *never* presented or discussed. Discussion *only* on "token" settlement was permitted. When plaintiffs refused the token settlement, their cause was dismissed, as previously and emphatically threatened. Costs were taxed against plaintiffs.

Petitioners were peremptorily summoned to a meeting on Nov. 13, 1980, in Judge Heaney's chambers. Their attorney, who did not appear, had warned petitioners that they "might not be permitted to speak", together with other admonitions. No "hearing" was held, and said attorney has withdrawn from the case.

Application for the writ is based on the Court of Appeals' denial of petitioners' rights under the 5th and 14th Amendments to the Constitution of the United States to due process and the equal protection of the law.

On the second page, A-2, paragraph 3, line 3 of the opinion (Appendix A) the Court of Appeals states:

> "It (the Court) suggested that the matter might be resolved if the plaintiffs would pay a 1971 judgment against them, together with accrued interest thereon to the defendants, and.."

The Court was *purposely misinformed* by respondents' attorneys, who had no judgment to cite or show the Court.

There is not now, and *never* has been any judgment against the plaintiffs, contrary to the statement by the Court in its Opinion (Appendix A, page A-2, third paragraph).

REASONS FOR GRANTING THE WRIT

I

The Opinion Of The Court Of Appeals "Conflicts With Applicable Decisions Of This Court" (Rule 17[c] Of The Supreme Court).

A compelling reason for granting this writ is that the opinion of the Court of Appeals herein is in conflict with applicable decisions of the Supreme Court. The dismissal of the Complaint violates the principles of construction set out as follows:

"Following the simple guide of Rule 8 (f) that 'all pleadings shall be so construed as to do substantial justice,' we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley et al.* v. *Gibson et al.*, 355 U.S. 41, at 78 S.Ct. 99, 103, 2 L. Ed. 2d 80 (1957).

II

"The Court Of Appeals" Has Decided An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court" (Rule 17[c] Of The Supreme Court.) Because It Affects *Adversely* A Large Class Of Citizens: The Minority Shareholders Of The United States.

Another compelling reason for granting this writ is that irreparable damage is being done to the corporate business structure of these United States by the use of a widely taught and practised fraud technique used herein.

The fraudulent merger technique, "without a lawful business purpose" used herein, is taught in a recently published book (Appendix B) offered and sold to lawyers and businessmen.

This book is entitled "*SQUEEZE-OUTS*"; it was written by Bertil Westlin, J.D., (a member of the New York Bar and the Legal Editor of "*BOARDROOM REPORTS*"). Published by the Council for Business Research, Inc., it describes in detail, according to its advertisement, "89 WAYS BUSINESS ASSOCIATES ARE SQUEEZED OUT". Copy of the title page of this book, together with copies of the pertinent pages 64 through 67 are attached as Appendix B.

The Court's attention is particularly directed to Appendix B, pp. 64 through 67, for its description of "Upstream-" or "Up the River Mergers and Consolidations". The author points out his most interesting conclusion on page 67, at line 9 (Appendix B, page A-6):

> "Whether or not federal securities laws' principles, particularly the antifraud provisions found in SEC Rule 10b-5, may be invoked to help the minority in these situations is still open to question."

In the present case two so-called "phantom mergers" with "dummy" corporations (owned entirely by respondents Blanton and Erma Wiggin) were employed by them in their schemes to circumvent SEC Rule 10b-5.

Petitioners do not seek to outlaw "upstream mergers" as described with "phantom or dummy corporations". They petition for a ruling that these mergers are subject, as every interstate security transaction is, to the requirements of Rule 10b-5 (see *Dupuy* v. *Dupuy, supra*). This book "SQUEEZE-OUTS" (Appendix B, page A-6) states on its page 67, in the quotation *supra,* that "whether or not...antifraud provisions found in SEC rule 10b-5, may be invoked ...is still open to question."

The reason for the wide precedential value and imperative public importance of this case is that there are more than 30,000,000 stockholders in the United States, most of whom are "minority stockholders" who may be at some time affected by the ruling in this case.

III.

The Complaint Clearly States A Cause Of Action Upon Which Relief Can Be Granted, Otherwise There Could Be No Reason For An Offer Of Settlement, And So Marked A Departure "From The Accepted And Usual Course Of Judicial Proceedings" By The Court Of Appeals In Connection Therewith, "As To Call For This Court's Power Of Supervision (Under Supreme Court Rule 17[a])

Counts 1 through 13 of the Complaint detail the various fraudulent interstate transactions, directly or through their "dummy" corporate respondents by which Blanton and Erma Wiggin transferred as many portions of the property of Med-Science Electronics, Inc., as they could, to themselves, to lower the "fair value" of said corporation's stock. These transactions were disguised in the Minutes of the Board of Directors, and entered in deceptive forms on the financial statements mailed to petitioners in connection with the sale of the securities, thereby violating §10b-5, *supra.*

Counts 14 and 15 of the Complaint detail §10b-5 violations by a local agent representing respondents Blanton and Erma Wiggin. Said agent was paid with corporation funds disguised as "wages" to the agent's son, said "wages" were in excess of the sums drawn yearly by Blanton Wiggin as President and majority stockholder in total control of the corporation.

The Counts 14 and 15 meet fully the requirements of *Falls* v. *Fickling,* and *Conley* v. *Gibson, supra.*

Count 16, directed to payment for petitioners' stock, was filed timely, *by leave of Court, before* defendants-respondents filed an an Answer (as they never have), in full compliance with the Rules of Federal Procedure. Count 16 properly asserts a cause of action upon which relief can be granted, as is obvious from its dismissal by the Court of Appeals "*without prejudice*".

However, dismissal without prejudice will compel petitioners to refile Count 16 *after* the tolling of the statute of limitations for common law fraud, thereby denying petitioners the protection afforded by §10b-5 against such fraudulent securities transactions.

For the first time the Constitutional Questions were raised by the Court of Appeals' departure "from the accepted and usual course of judicial proceedings" (Rule 17[a] of the Supreme Court) by that Court's conduct of the October 16, 1980, "Hearing" and again at its November 13, 1980, "meeting" in chambers. Plaintiffs were repeatedly threatened with dismissal and taxation of costs if they did not accept a "token" settlement. They were not allowed to speak.

At both unjudicial "proceedings" the Court of Appeals for the Eighth Circuit denied the petitioners any hearing on the *only question on appeal:* whether the Complaint states a cause of action upon which relief can be granted. This question was never heard before the district court, which refused to hold a hearing on said question. Similarly the Court of Appeals would not hear any discussion of that issue.

By its *unprecedented* actions the Court of Appeals for the Eighth Circuit has denied the petitioners their rights to "due process" and "equal protection of the law" under the 5th and the 14th Amendments to the Constitution of the United States.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

Frank Groom Kirtz, and
Mary Jane Kirtz, pro sese.
4530 Pershing
St. Louis, Mo. 63108

May 15, 1981

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1073

Frank Groom Kirtz and
Mary Jane Kirtz,
Appellants,

v.

Blanton Wiggin; Erma Wiggin;
Advanced Instruments, Inc.,
A. I. Company, Inc., a/k/a
Advanced Instruments, Inc.
and H T L Instruments, Inc.,
Appellees.

Appeal from the United States
District Court for the Eastern
District of Missouri.

Submitted: October 16, 1980

Filed: February 5, 1981

Before HEANEY, ADAMS,* and STEPHENSON,
Circuit Judges.

---

*The HONORABLE ARLIN M. ADAMS, United States Circuit Judge for the Third Circuit Court of Appeals, sitting by designation.

PER CURIAM.

This matter is before the Court for the second time. When it was first here, we considered the district court's dismissal of all of the counts of a thirteen-count complaint. We upheld the dismissal with respect to three of the thirteen counts but reinstated the remaining counts and remanded to the district court for further consideration. *Kirtz* v. *Wiggin*, No. 77-1351, filed December 30, 1977 [566 F.2d 1179 (8th Cir. 1977).]

On remand, the complaint was again amended by the plaintiffs. The district court carefully considered the defendants' motion to dismiss the amended complaint of sixteen counts for failure to state a claim and for summary judgment. It held that judgment should be entered in favor of the defendants and against the plaintiffs on Counts 1 through 15, and that Count 16 should be stricken without prejudice.

During the course of oral argument and thereafter, this Court encouraged the parties to settle this lengthy litigation. It suggested that the matter might be resolved if the plaintiffs would pay a 1971 judgment against them, together with accrued interest thereon to the defendants and that, in turn, Advanced Instruments, Inc., a corporation controlled by the defendants, would pay a judgment against it in favor of the plaintiffs, together with the accrued interest thereon. The suggestion of the Court was accepted by the appellees and rejected by the appellants; thus, no settlement in the matter was achieved.

After oral argument and careful consideration of the records and briefs, we affirm the judgment of the district court on the basis of its well-reasoned opinion. *Kirtz* v. *Wiggin*, 483 F.Supp. 148 (D. E.D. Mo. 1980). Costs will be taxed to the appellants.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

SQUEEZE-OUTS

How to Separate from Your Business Associates... and How To Protect Your Interests

by Bertil Westlin, J.D.

Member of the New York Bar
Legal Editor/*BOARDROOM REPORTS*

Council for Business Research, Inc.
500 Fifth Avenue
New York, New York 10036

[64] UP THE RIVER WITH MERGERS AND CONSOLIDATIONS

. . . . . .

"The more common type of merger in squeeze-out situations, however, is not the short-form merger but one in which a merger is effected with a corporation in which the majority shareholders, or individuals within their control, have a personal interest. It may be an existing corporation currently engaged in the active conduct of a business or it may be a dummy corporation set up by the majority shareholders. Such use of a dummy corporation was upheld in one case as serving a lawful business purpose against charges of fraud and unfairness. *Matteson* v. *Ziebarth,* 242 P. 2d 1025, 40 Wash. (1952). But a more recent case viewed such a use of a dummy corporation as an illegal squeeze-out technique. In this case, the Fifth Circuit Court of Appeals said that:

> "Where a corporation is unable, because of well-recognized contract law, to eliminate a minority stockholder by simply adopting a by-law or voting to purchase his stock, its majority stockholders cannot accomplish **[65]** the same purpose by setting up a second corporation wholly owned by them whose sole purpose is to enable it to take advantage of the merger statutes which, when utilized by two existing corporations, may, as a part of the merger procedure, result in the elimination of a dissenter." [Bryan v. Brock & Blevins Co., Inc., CA-5, CCH Securities Law Reporter #94,414 (2/27/74).]

In reaching its conclusion, the Appeals Court noted the earlier finding of the trial court that there was no "business purpose" for the merger and said that, "In the absence of such business purpose [the dummy corporation] was purely a sham created to circumvent the rule of law that prohibits a majority of stockholders of a corporation, absent a charter provision as to the contrary, to force the minority interests to surrender their stock holdings."

Because of its decision on these grounds, it was unnecessary for the court to consider whether or not there might also have been a violation of the federal securities laws — specifically, SEC 10b-5, the anti-fraud rule. However, the court also noted that the merger had been characterized as a "device, scheme or artifice to defraud" the minority shareholder of his stock. This, on the face of it, would certainly bring the case within the provisions of SEC Rule 10b-5. [More on this can be found in Chapter VII.]

To protect shareholders objecting to some fundamental change in their corporation, state laws generally give them the right to demand that the corporation pay them for the appraised value of their shares. The laws may vary from state to state as to what [66] proposed changes in the corporation give rise to this right and other matters concerning it. The basis of valuation of shares, for example, may be formulated differently—some refer to value; others fair value, fair market value and so forth. There may be variations, too, as to the time when value is determined, who is to make the determination, the conditions which must be fulfilled before payment may be demanded, and various other details.

In a number of states the appraisal remedy is exclusive; that is, the dissenting minority shareholders must either go along with the proposed change or accept cash for their shares and get out. However, as we've indicated, the remedy may not be deemed exclusive where the dissenting shareholders are able to show that the change is not being sought for a proper business purpose but is being used as a means of effecting a squeeze-out.

All states, except West Virginia at last count, give dissenters appraisal rights in the case of a merger. If a proposed merger, then, is unpalatable to the minority, the appraisal procedure may force the dissenters to either go along with the merger or give up their interest in the company. The latter, of course, is what the majority bent upon a squeeze-out would prefer. A

merger move by the majority isn't easy to stop in most cases. In situations where the majority has set up a dummy corporation, as took place in *Bryan* v. *Brock & Blevins Co.*, Inc., it may be possible for the minority to stop the move, which is what the court ruled in that case. In a dummy corporation situation, the alleged business purpose of the move is quite obviously open to question. But where the proposed [67] merger is with an effectively operating corporation, it's difficult for the minority to prevent the change. If they are to succeed at all on the basis of corporate law principles, they must show a breach of fiduciary obligations on the part of the directors and controlling stockholders, lack of business purpose and/or some form of fraud. These elements may be difficult to prove. Fraud is usually hard to document. Questions involving business purpose touch upon matters of business judgment, an area in which courts are reluctant to act. Whether or not federal securities laws' principles, particularly the antifraud provisions found in SEC Rule 10b-5, may be invoked to help the minority in these situations is still open to question. Certainly, if it can be shown that the purpose of the majority is to use the merger as a means of squeezing out the minority, the argument may be advanced that the merger is a device to defraud the minority by pressuring them to sell their shares via the appraisal procedure. But there still is a problem of proof. However, proof of fraud under Rule 10b-5 may be easier than proof of so-called common law fraud, since proof of *intent* to defraud may not be required and the requirement of reliance (i.e. defrauded party relied on representations of defrauder) needed in common law fraud may be whittled down.